



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/728,984	12/08/2003	David Seidler	9007.0003	1104

22852 7590 01/11/2007
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER
LLP
901 NEW YORK AVENUE, NW
WASHINGTON, DC 20001-4413

EXAMINER

DOAN, ROBYN KIEU

ART UNIT	PAPER NUMBER
----------	--------------

3732

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/11/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication..

Office Action Summary

Application No.

10/728,984

Applicant(s)

SEIDLER ET AL.

Examiner

Robyn Doan

Art Unit

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 37, 40-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jeong (IDS cited WO 90/15215) in view of Benson (U.S. Pat. # 2,302,661).

With regard to claim 37, Jeong discloses a device (fig. 2) comprising a base (30) defining at least one compartment having an opening (at 30f), the base further having at least one base recess (39, fig. 3), a cover (20) movable with respect to the base, in a generally hinge-like manner (fig. 2), a cover opening limiter (90, page 4, lines 14-16) extending from the cover, the cover opening limiter comprising an end portion (page, 4, line 12) configured to be engaged with the base recess when the cover is in the open position, wherein the cover opening limiter being configured to limit an angular extent of generally hinge-like movement of the cover (page 4, lines 10-16). Joeng fails to shows the cover opening limiter moves into the base recess when the cover is moved from the open position to the closed position, however, Benson discloses a hinge (figs. 3 and 4) having an end portion (50) that moves from an open position to a closed position. It would have been obvious to one having an ordinary skill in the art at the time the

invention was made to construct the hinge as taught by Benson into the device of Jeong for the purpose of hiding a portion of the hinge. In regard to claim 40, Jeong in view of Benson show the end portion of the cover opening limiter having a projection (at 50, see fig. 3 of Benson. In regard to claim 41, Jeong also shows the cover having a cover recess (29, fig. 3) and an opposite end portion of the cover opening limiter comprising an axle (fig. 7b, applicant is noted that to call one end of the cover limiter 90 as shown in fig. 7b as an axle is merely a terminology since the end portion of cover limiter 90 functions the same as the claimed invention).

Claims 38-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jeong in view of Benson and further in view of Tsai (IDS cited reference U.S. Pat. # 4,807,773).

With regard to claims 38-39, Jeong in view of Benson disclose a device comprising all the claimed limitations in claim 37 as discussed above except for an inner surface of the cover having a mirror, the device being a cosmetic compact and including at least one cosmetic product and a cosmetic applicator in the compartment. Tsai discloses a cosmetic compact (fig. 4) comprising a base (2), a cover (22) having a mirror (24) being on an inner surface; the base having first and second plate-shaped members (1, fig. 2) each having cosmetic product (11) differing from one another (abstract, lines 4-5) and the plate-shaped members being stacked on each other (figs. 2, 4). The cosmetic compact also having a cosmetic applicator (12). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to

modify the device of Jeong in view of Benson with a mirror, at least one cosmetic product and a cosmetic applicator as taught by Tsai for the purpose of providing make-up tools to the female user's.

Claims 1-4, 42, 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Seidler (IDS cited reference U.S. Pat. # 6,283,298) in view of Tsai (IDS cited reference).

With regard to claims 1, 42, 43, Seidler '298 discloses a device (fig. 4) comprising a base (14) defining at least one compartment (26) having an opening (30), a cover (12); the cover and the base associated with each other in a generally hinge-like manner (fig. 4) between an open and a closed positions. Seidler also shows the cover and the base being secured together by a magnetic assembly (col. 3, lines 65-67). Seidler also shows the cover moving with respect to the base up to an angular extent (fig. 4). Seidler fails to show a mirror on the inner surface of the cover, a first and second magnets coupled with the base and cover and the angular extent being less than 180 degrees and greater than or equal to 100 degrees. Tsai discloses a cosmetic compact having a cover (22, fig. 4) with a mirror (24) on the inner surface of the cover. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the mirror as taught by Tsai into the compact of Seidler '298 in order for the user to be able to view herself while making-up. It would also have been an obvious matter of design choice to construct one first magnet at the base and the second magnet at the cover, since such a modification would involved a mere

Art Unit: 3732

design choice of a known component. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the angular extent of less than 180 degrees and greater than or equal to about 100 degrees since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233. In regard to claim 2, Seidler discloses the device being a cosmetic compact having at least one of a cosmetic product (32) and a cosmetic applicator (35). In regard to claims 3 and 4, Seidler in view of Tsai fail to show the maximum angular extent being less than or equal to about 160 degrees or 130 degrees. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the maximum angular extent being less than or equal to about 160 degrees or 130 degrees since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

Claims 5-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Seidler in view of Tsai as applied to claim 1 above, and further in view of Jeong.

With regard to claims 5-8, Seidler in view of Tsai discloses a device comprising all the claimed limitations in claim 1 as discussed above except for a cover opening limiter having a first end portion with an axle and the second end with a projection and wherein the base engages with the projection when the cover being in the open position and the cover having a cover recess. Jeong discloses a device (fig. 2) comprising a

base (30) defining at least one compartment having an opening (at 30f), the base further having at least one base recess (39, fig. 3), a cover (20) movable with respect to the base, in a generally hinge-like manner (fig. 2), a cover opening limiter (90, page 4, lines 14-16) extending from the cover and the device being configured to stabilize the cover with respect to the base when the cover being in the open position; Jeong shows one end portion of the cover opening limiter having a projection, see fig. 7a, and wherein the base (30) engaging with the projection when the cover being in the open position and the cover having a cover recess (29, fig. 3) and an opposite end portion of the cover opening limiter comprising an axle (fig. 7b, applicant is noted that to call one end of the cover limiter 90 as shown in fig. 7b as an axle is merely a terminology since the end portion of cover limiter 90 functions the same as the claimed invention). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the cover opening limiter as taught by Jeong into the device of Seidler in view of Tsai for purpose of stabilizing the cover and the base and limiting the opening angle of the device.

Claims 1 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kamen et al (IDS cited reference).

With regard to claim 1, Kamen et al discloses a device (figs. 4-6) comprising a base (112) defining at least one compartment (116) having an opening (120), a cover (114) having an inner surface with a mirror (138, fig. 6); the cover and the base associated with each other in a generally hinge-like manner (144) between an open and

Art Unit: 3732

a closed positions; at least one magnet (148) associated with the cover and at least one magnet (146) associated with the base. Kamen et al also shows the cover moving with respect to the base up to an angular extent (fig. 4), however, Kamen et al fails to show the angular extent of less than 180 degrees and greater than or equal to about 100 degrees. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the angular extent of less than 180 degrees and greater than or equal to about 100 degrees since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233. In regard to claim 9, Kamen et al discloses the first magnet having a pair of magnets (148, fig. 6) and the second magnet having a pair of magnets (146, fig. 6).

Claims 10-11 and 25-28, 33-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kamen et al in view of Tsai.

With regard to claims 10-11 and 25, 33-34, Kamen et al discloses a device comprising all the claimed limitations in claim 1 as discussed above except for the base having first and second plate-shaped members each having magnets coupling to each other by stacking on one another and each plate-shaped member having a cosmetic product differing from one another. Tsai, as discussed above, discloses a cosmetic compact (fig. 4) comprising a base (2), a cover (22) having a mirror (24) being on an inner surface; the base having first and second plate-shaped members (1, fig. 2) each having cosmetic product (11) differing from one another (abstract, lines 4-5) and the

Art Unit: 3732

plate-shaped members being stacked on each other (figs. 2, 4). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the particular base as taught by Tsai into the device of Kamen et al in order to provide a variety of cosmetic products to match a desire color to the user. In regard to claim 26, Kamen et al shows the device being a cosmetic compact and having at least one cosmetic product (128) and a cosmetic applicator (122). In regard to claims 27-28, Kamen et al in view of Tsai fail to show the maximum angular extent being less than or equal to about 160 degrees or 130 degrees. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the maximum angular extent being less than or equal to about 160 degrees or 130 degrees since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233. In regard to claim 35, Kamen et al fails to show the cosmetic being in one member and the applicator being in the other member, however, Tsai shows the cosmetic (11) being in one plate member and the applicator (12) being in another plate member. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the cosmetic product and the applicator being in different plates as taught by Tsai into the device of Kamen et al for the intended use purpose.

Claims 12-21 rejected under 35 U.S.C. 103(a) as being unpatentable over Kamen et al in view of Jeong and Benson.

In regard to claims 12-14, Kamen et al discloses a device comprising all the claimed limitations in claim 1 as discussed above except for a cover opening limiter extending from the cover having an end portion configured to be engaged with a portion of a base recess and wherein the cover opening limiter being configured to limit an angular extent generally hinge-like movement of the cover. Jeong discloses a device (fig. 2) comprising a base (30) defining at least one compartment having an opening (at 30f), the base further having at least one base recess (39, fig. 3), a cover (20) movable with respect to the base, in a generally hinge-like manner (fig. 2), a cover opening limiter (90, page 4, lines 14-16) extending from the cover. Benson discloses a hinge (figs. 3 and 4) having an end portion (50) that moves from an open position to a closed position. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the cover opening limiter as taught by Jeong into the device Kamen et al for purpose of stabilizing the cover and the base and limiting the opening angle of the device. It would also have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the hinge as taught by Benson into the device of Kamen and Jeong for the purpose of hiding a portion of the hinge. In regard to claim 15, Kament et al shows the device being a cosmetic compact and having at least one cosmetic product (128) and a cosmetic applicator (122). In regard to claims 16-17, Kamen et al in view of Jeong and Benson fail to show the maximum angular extent being less than or equal to about 160 degrees or 130 degrees. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the maximum angular extent being less than or equal

to about 160 degrees or 130 degrees since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233. In regard to claims 18-20, Jeong further shows one end portion of the cover opening limiter having a projection, see fig. 7a, and wherein the base (30) engaging with the projection when the cover being in the open position and the cover having a cover recess (29, fig. 3) and an opposite end portion of the cover opening limiter comprising an axle (fig. 7b, applicant is noted that to call one end of the cover limiter 90 as shown in fig. 7b as an axle is merely a terminology since the end portion of cover limiter 90 functions the same as the claimed invention) and wherein the device being configured to stabilize the cover with respect to the base when the cover being in the open position. In regard to claim 21, Kamen et al discloses the first magnet having a pair of magnets (148, fig. 6) and the second magnet having a pair of magnets (146, fig. 6).

Claims 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kamen et al in view of Jeong and Benson as applied to claim 12 above, and further in view of Tsai.

With regard to claims 22-23, Kamen et al in view of Jeong and Benson disclose a device comprising all the claimed limitations in claim 12 as discussed above except for the base having first and second plate-shaped members each having magnets coupling to each other by stacking on one another and each plate-shaped member having a cosmetic product differing from one another. Tsai, as discussed above, discloses a

Art Unit: 3732

cosmetic compact (fig. 4) comprising a base (2), a cover (22) having a mirror (24) being on an inner surface; the base having first and second plate-shaped members (1, fig. 2) each having cosmetic product (11) differing from one another (abstract, lines 4-5) and the plate-shaped members being stacked on each other (figs. 2, 4). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the particular base as taught by Tsai into the device of Kamen et al in view of Jeong and Benson in order to provide a variety of cosmetic products to match a desire color to the user. In regard to claim 24, Tsai discloses each of the first and second plate members having a recess (16, col.2, line 20).

Claims 29-32, 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kamen et al in view of Tsai as applied to claim 25 above, and further in view of Jeong in view of Benson.

With regard to claims 29-32, 36, Kamen et al in view of Tsai disclose a device comprising all the claimed limitations in claim 1 as discussed above except for a cover opening limiter having a first end portion with an axle and the second end with a projection and wherein the base engages with the projection when the cover being in the open position and the cover having a cover recess. Jeong discloses a device (fig. 2) comprising a base (30) defining at least one compartment having an opening (at 30f), the base further having at least one base recess (39, fig. 3), a cover (20) movable with respect to the base, in a generally hinge-like manner (fig. 2), a cover opening limiter (90, page 4, lines 14-16) extending from the cover. Benson discloses a hinge (figs. 3 and 4)

Art Unit: 3732

having an end portion (50) that moves from an open position to a closed position. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the cover opening limiter as taught by Jeong into the device Kamen et al in view of Tsai for purpose of stabilizing the cover and the base and limiting the opening angle of the device and it would also have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the hinge as taught by Benson into the device of Kamen in view of Tsai and Jeong for the purpose of hiding a portion of the hinge.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robyn Doan whose telephone number is (571) 272-4711. The examiner can normally be reached on Mon-Fri 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3732

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Robyn Doan
Examiner
Art Unit 3732